IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950
No. 441

RIGGS DEVELOPMENT COMPANY AND COLONIAL MORTGAGE CORPORATION, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

STATUTE INVOLVED

Sec. 117 (j) (1) of the Federal Internal Revenue Code, 26 U. S. C. A. 117 (j) (1) page 407, which is cited and quoted in part on page 10 of the brief in support of the petition for Writ of Certiorari is not involved in these cases.

SUMMARY OF ARGUMENT

The question involved in these cases was whether or not the sales of certain real property by petitioners were sales of capital

assets and hence non-taxable income under pertinent provisions of the District of Columbia Revenue Act of 1939 (R. 150, 151). That question is one of fact.

These cases do not present any of the questions upon which this Court ordinarily grants a writ of certiorari.

The matter involved is not of general importance and does not involve any question arising under the Federal Internal Revenue Code.

ARGUMENT

The Petition Should Be Denied

The Board of Tax Appeals for the District of Columbia found as an ultimate fact (R. 12) that the properties sold by petitioners during the fiscal years were, at and prior to the times of the sales thereof, held by petitioners primarily for sale to customers in the ordinary course of petitioners' trade or business. There can be no doubt that such a finding is properly one of fact, *Dobson* v. *Commissioner,* 321 U. S. 231, 88 L. Ed. 691, 64 S. C. 495; *Real Estate Mortgage & Guaranty Corporation* v. *District of Columbia,* 78 U. S. App. D. C. 390, 141 F. 2d 361; *Robb* v. *District of Columbia,* 80 U. S. App. D. C. 246, 152 F. 2d 283. See also *Neils Schultz* v. *Commissioner,* 44 B. T. A. 146; *Julius Goodman* v. *Commissioner,* 40 B. T. A. 22; and *A. R. Calvelli* v. *Commissioner,* 43 B. T. A. 6.

The Board concluded as a matter of law, that such sales were not sales of capital assets within the meaning of Sec. 6 (a) of the District of Columbia Revenue Act of 1939, 53 Stat. 1091 (Sec. 47-1506(a), D. C. Code, 1940) and that the gains from such sales were subject to the income tax imposed under the provisions of the aforesaid Act. The United States Court of Appeals for the District of Columbia Circuit had power to set aside the determinations of the Board of Tax Appeals if convinced, which it was not in these cases, that the Board was clearly wrong. *District of*

Columbia v. *Pace*, 320 U. S. 698, 88 L. Ed. 408, 64 S. Ct. 406.

This Court has stated that it will not ordinarily review decisions of the United States Court of Appeals for the District of Columbia which are based upon statutes limited in their operation to the District of Columbia. *District of Columbia* v. *Pace, supra, Del Vecchio* v. *Bowers*, 296 U. S. 280, 285, 80 L. Ed. 229, 56 S. Ct. 190. The statute involved is such a statute.

Argument and contentions of the petitioners to the contrary notwithstanding, they are asking this Court to take this case merely to determine a question of fact. As was hereinbefore stated, the Court of Appeals had power to set aside the determination of the Board only if the Court was convinced, which in this case it was not, that the Board was clearly wrong. This Court is not called upon to separate factual from legal grounds of decisions and to determine whether affirmance of the Board of Tax Appeals by the Court of Appeals could stand on questions of law alone. *District of Columbia* v. *Pace, supra.*

Rule 38, par. 5(c) of the Revised Rules of this Court indicates the nature of the reasons for which a review on a writ of certiorari will be granted. Applying those reasons to the instant case, it seems clear that a writ should not issue in this case. There is no question of general importance involved.

Since the question involved in these cases was one of fact, the decision would not affect any other taxpayers unless the facts in such other taxpayers' cases were similar to the facts in these cases, which is very unlikely.

Applying the facts in these cases to the reasons set forth in said Rule 38, par. 5(c) of the Revised Rules of this Court, it is equally clear that there is in this case no question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this Court.

CONCLUSION

It is submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

VERNON E. WEST,
Corporation Counsel, D. C.,

CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,

HARRY L. WALKER,
Assistant Corporation Counsel, D. C.,
Attorneys for Respondent,
District Building,
Washington 4, D. C.